

Filed 6/26/07 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2007 ND 92

Luis Hernandez, Sr.,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

No. 20070051

Appeal from the District Court of Cass County, East Central Judicial District,
the Honorable Georgia Dawson, Judge.

AFFIRMED.

Per Curiam.

Bonnie L. Storbakken, P.O. Box 7273, Bismarck, ND 58507-7273, for
petitioner and appellant.

Birch P. Burdick, State's Attorney, P.O. Box 2806, Fargo, ND 58108-2806, for
respondent and appellee.

Hernandez v. State

No. 20070051

Per Curiam.

[¶1] Luis I. Hernandez, Sr., appealed from a district court judgment denying his application for post-conviction relief. Hernandez argued that his trial counsel committed numerous errors which cumulatively caused him to receive ineffective assistance of counsel. Additionally, he argued that his claim of prosecutorial misconduct should not be barred for misuse of process. We conclude the district court properly denied Hernandez's application for post-conviction relief. We summarily affirm under N.D.R.App.P. 35.1(a)(2) and (7). See Laib v. State, 2005 ND 187, ¶¶ 6-7, 705 N.W.2d 845 (holding that a claim of prosecutorial misconduct may be dismissed for misuse of process when the defendant has inexcusably failed to raise the issue in prior proceedings).

[¶2] Gerald W. VandeWalle, C.J.
Carol Ronning Kapsner
Mary Muehlen Maring
Daniel J. Crothers
Dale V. Sandstrom